



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Research Analysis and Maintenance, Inc.

File: B-242836.4

Date: October 29, 1991

Bob Waldron for the protester,
Pamela J. Mazza, Esq., Piliero, Mazza & Pargament, for
Technical and Management Services Corporation, an interested
party,
Craig E. Hodge, Esq., and Captain James McGroary, JAGC,
Department of the Army, for the agency.
Jacqueline Maeder, Esq., Glenn Wolcott, Esq., and
Paul Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Agency's determination that protester's proposal was technically unacceptable was reasonable where protester acknowledges the validity of the agency's negative evaluation of one factor, fails to show evaluation unreasonable with respect to another factor and, following discussion and submission of revised proposals, the protester's proposal failed to otherwise demonstrate adequate understanding of work to be performed.
2. Protest that agency failed to conduct meaningful discussions is denied where the protester reasonably was advised of the general area of deficiencies in its proposal and was given an opportunity to cure those deficiencies.
3. Protest alleging agency bias is denied where protester fails to provide specific evidence of malicious intent, and the agency record reasonably supports the contracting agency's technical judgments.

DECISION

Research Analysis and Maintenance, Inc. (RAM) protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. DAAB07-90-R-B802, issued by the U.S. Army Communications-Electronics Command (CECOM) in Fort Monmouth, New Jersey, for integrated logistics support. RAM contends that the agency improperly evaluated RAM's

proposal, failed to conduct meaningful discussions, and was biased against RAM.

We deny the protest.

BACKGROUND

The RFP, issued on May 14, 1990, as a small business set-aside, provided for award of a time and materials contract for a base year and four 1-year options. The solicitation provided that proposals would be evaluated on the basis of technical, management, and price factors, with technical and management factors more important than price, and that award would be based on the "best overall value" to the government. The RFP further divided the technical factor into three subfactors--technical approach to the statement of work, technical approach to sample tasks, and personnel experience--and provided that to be considered for award proposals must be rated at least "acceptable" in each of the factors and subfactors.

Initial proposals were submitted on July 9, and following discussions, best and final offers (BAFOs) were submitted on October 15. On January 18, 1991, the agency awarded a contract to Technical and Management Services Corporation (TAMSCO). On February 4, RAM filed a protest with our Office challenging that award. Upon reviewing that protest, CECOM determined the procurement had been improperly conducted and, consequently, terminated TAMSCO's contract and reopened negotiations.

By letter dated May 7, the agency advised RAM of certain "items for negotiation" (IFNs) identifying two deficiencies in RAM's proposal with regard to its technical approach to the sample tasks.² The agency specifically advised RAM

¹Based on the agency's corrective action, we dismissed RAM's protest on March 13. In response to a subsequent protest by TAMSCO challenging the termination, we determined that the agency's actions in terminating the contract and reopening negotiations were proper. See Technical and Management Servs. Corp., B-242836.3, July 30, 1991, 91-2 CPD ¶ 101.

²Section L of the RFP identified the sample tasks which offerors were to address in their proposals. Specifically, offerors were instructed to "describe the parts of, elaborate on the contents of each part, the sources for information of each part and the importance of each part" of the following plans: integrated logistics support plan (ILSP); materiel fielding plan (MFP); basis of issue plan feeder data (BOIPFD); system MANPRINT management plan (SMMP); and provisioning plan (PP). The RFP further

that its proposed integrated logistics support plan (ILSP) was deficient "in the areas of the source of information and the importance of each part of the ILSP." The agency also advised RAM that its proposed materiel fielding plan (MFP) was deficient, noting that "[p]roblems exist in the description and content of each part."³ The agency's letter requested that RAM's response be submitted by May 21.

Upon receipt of RAM's response, the agency again evaluated its proposal and determined that the proposal remained deficient with regard to the ILSP and the MFP. Specifically, regarding RAM's revised ILSP, the agency stated:

"The offeror's response to questions concerning the [ILSP] is minimal in content and just slightly better than the total confusion exhibited in the preliminary review."

With regard to RAM's revised MFP, the agency stated:

"The offeror's response to the questions concerning the [MFP] still failed to address milestone development. This is too important to the [MFP] to be left out. Generally, the information is minimal and some misinformation is presented."

As examples of erroneous information, the agency stated that RAM had improperly referred to CECOM as the "combat developer" and also improperly referred to the Systems Training Plan (STRAP), which was not directly related to the MFP.⁴ Based on this evaluation, the agency found RAM's proposal unacceptable with regard to its technical approach

instructed the offerors to "describe the appropriate time for development/updating" for each of the first four plans above.

³In addition to the two deficiencies, the agency advised RAM that its proposed system MANPRINT management plan (SMMP) was "generally weak" and needed "elaboration on the contents of the parts of the plan."

⁴Following RAM's comments on the agency report, the agency provided a supplemental statement, further explaining RAM's deficiencies. In general, this supplemental statement simply reiterated the agency's position that RAM's proposal did not demonstrate an adequate understanding of the materiel fielding process, and provided additional examples of RAM's deficiencies in that regard.

to these simple tasks and eliminated it from the competitive range. This protest followed.

PROPOSAL EVALUATION

RAM challenges the agency's conclusion that its technical approach to two sample tasks was unacceptable. RAM disputes the two examples of misinformation identified by CECOM in evaluating RAM's ILSP and argues generally that CECOM failed to adequately support its rating of RAM's proposal as unacceptable.

To support its position, RAM points out that, contrary to the agency's statement regarding its ILSP, RAM did not refer to CECOM as the "combat developer," but identified CECOM as the "Materiel Developer." Similarly, RAM disagrees with CECOM regarding its reference to the STRAP, arguing that there is some relationship between the STRAP and the ILSP. RAM further complains that the agency's evaluation of its ILSP improperly cited to portions of RAM's proposal relating to the statement of work rather than to the portion of its proposal which relates to the sample tasks. Finally, regarding CECOM's criticism of its failure to identify milestones in its MFP, RAM argues that its proposal addressed the initial and final milestones and asserts that "[i]t is not clear how [an offeror] could be cognizant of initial and final milestones without also being aware of intermediate milestones."

In reviewing a protest against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate proposals and substitute our judgment for that of the agency. Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409; Ira T. Finley Invs., B-222432, July 25, 1986, 86-2 CPD ¶ 112. Rather, the determination of the technical adequacy and technical merits of an offeror's proposal is primarily the function of the procuring agency. AT&T Technology Sys., B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57. We will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. See American Electric Complex Sys., B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30. The fact that the protester disagrees with the agency does not itself

⁵RAM also asserts that the agency did not identify its failure to adequately address milestones until after RAM had filed its protest. RAM is in error in this regard. The record indicates that the agency's evaluators referenced this omission in the evaluation of both RAM's initial and revised proposals.

render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Here, we find no basis to question the agency's evaluation of RAM's proposal. While RAM focuses on minor discrepancies in the agency's evaluation, RAM fails to demonstrate that the agency's overall assessments were unreasonable. In fact, with regard to the agency's negative evaluation of RAM's proposed ILSP, RAM expressly acknowledges that "the [agency's] subjective evaluation of RAM's proposed technical approach to the sample tasks for the ILSP cannot really be challenged." As for the negative evaluation of RAM's MFP, the record shows that RAM did not identify or otherwise address intermediate milestones. RAM asserts that because it identified the initial and final milestones, CECOM should have inferred that it was aware of intermediate milestones. We disagree. The technical evaluation of a proposal is based on information submitted in it and an offeror runs the risk of having its proposal rejected if the proposal submitted is inadequately written. Defense Sys. Concepts, B-242755.2, July 1, 1991, 91-2 CPD ¶ 2. This principle is particularly applicable where, as here, the offeror's recognition and discussion of specific information was an indicator of whether it understood the work to be performed. Regarding the agency's reference to RAM's statement of work in the evaluation of the ILSP, we note that much of the information in RAM's proposal regarding the statement of work is similar to the information regarding the sample tasks. The agency acknowledges that it inadvertently cited to incorrect portions of RAM's proposal and has identified the correct citations. Based on our review of RAM's proposal and the agency's evaluation, we conclude that the agency's clerical error does not affect the substantive validity of the evaluation.

MEANINGFUL DISCUSSIONS

RAM also protests that the agency violated Federal Acquisition Regulation (FAR) § 15.610(c)(2) and (5) by not providing more specific information regarding its deficiencies, comparing the information in the agency's evaluation summary of its SMMP to the information disclosed in the letter advising it of the areas in which its proposal was deficient. In the letter, CECOM stated that RAM's proposed SMMP was "generally weak" and that RAM should elaborate on the contents of the parts of the plan. In contrast, the evaluation summary indicated, among other things, that:

"[RAM's proposal] did not elaborate on the purpose, overview or key points of an SMMP. RAM also did not mention major responsibilities, or, whether or not a SMMP is to be maintained.

Further, RAM's proposal failed to elaborate on characteristics of the proposed system, the acquisition strategy and the agencies which play a role in the acquisition of systems. RAM also failed to address any guidance, mission and operational characteristics, environmental concerns or design characteristics, specifically related to MANPRINT."

RAM asserts that the "significant disparity" between the detailed contents of the agency's evaluation and the agency letter demonstrate that the agency failed to conduct meaningful discussions.

Although, where an agency conducts discussions with offerors such discussions must be meaningful, agencies are not obligated to "spoon-feed" offerors as to what factors must be addressed in an acceptable proposal or to conduct all-encompassing discussions. Training and Management Resources, Inc., B-234710, June 29, 1989, 89-2 CPD ¶ 12; Rainbow Technology, Inc., B-232589, Jan. 24, 1989, 89-1 CPD ¶ 66. Agencies are precluded from providing such detailed information as to constitute technical leveling or technical transfusion, and are obligated only to lead offerors into the areas of their proposals which require amplification. See FAR § 15.610(d); Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430; Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400.

Here, the record establishes that CECOM satisfied its obligation to conduct meaningful discussions with RAM. While the letter advising RAM of its proposal's deficiencies was less detailed than the agency's evaluation summary, the letter identified each specific sample task that was weak or deficient and led RAM into the areas in which it needed to provide additional information. Accordingly, we find no basis for objecting to the discussions conducted by the agency.

BIAS

Finally, RAM maintains that the agency is biased against RAM because of its "previously successful protest." RAM points to the alleged unreasonable evaluation of its proposal and the alleged failure to conduct meaningful discussions as evidence of bias.

Where, as here, a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit convincing proof that contracting officials had a specific and malicious intent to harm the protester, since contracting

officials are presumed to act in good faith, Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Prejudicial motives will not be attributed to such officials on the basis of inference or supposition. Id. We have held that the opportunity for bias is not a sufficient basis to question an award of a contract, but that the protester must provide "evidence" showing actual bias. Id.

Here, RAM has produced no evidence to suggest bias, and we find no evidence in the record which supports RAM's allegation that CECOM is penalizing RAM for previously protesting to our Office.

The protest is denied.



fr James F. Hinchman
General Counsel